

1 document?

2 A Three?

3 JUDGE LUTON: It would be better to refer to
4 them by their exhibit numbers.

5 MS. ROBINSON: Okay, it's Peaches Exhibit
6 number 21.

7 MR. HALAGAO: Number 21?

8 MS. ROBINSON: Yes.

9 BY MS. ROBINSON:

10 Q Could you turn to Page Three of that
11 document?

12 A Yes.

13 Q At the bottom of that page, there's an amount
14 of \$250,000 listed.

15 A Correct.

16 Q And it's listed as initial capital
17 contribution. Is that correct?

18 A Correct.

19 Q All right. If you would turn to Page Four of
20 that same document, there's the same amount listed in
21 the form of a loan.

22 A Okay.

23 Q Which of these would be the correct
24 assessment of your contribution?

25 A Page Four.

1 Q Page Four? So they were not both a loan and
2 contribution?

3 A Correct.

4 Q I'd also like to direct your attention to
5 Peaches Exhibit 23. If you would turn to Page Two of
6 that document.

7 A Yes.

8 Q Section 8.3,3 where it allows a limited
9 partner to remove the general partner is it suffers
10 loses, if the partnership suffers losses in two
11 consecutive quarters.

12 Is that your understanding that that could
13 happen, that you have the power to do that?

14 A No. The second agreement and the third
15 agreement were -- the financing parts were changed
16 because this ultimately had the intention of being
17 taken to a financial institution. And that when
18 Battle, Fowler, which was the law firm who handled this
19 agreement drew the agreement, it is done from a bank
20 financing point of view.

21 The bank would want to be in a position that
22 if it's funds that were lent to it, they would have
23 some ultimate means of control in case of bankruptcy,
24 et cetera. And that was the purpose of the agreement.

25 Q But the agreement in the original document,

1 this is intact. Is that correct?

2 A The first agreement was not a financial
3 document.

4 Q No, this particular agreement, the second
5 agreement?

6 A The second agreement is a financial document.

7 Q But it is binding, right? This is the more
8 recent agreement?

9 A Yes.

10 Q Okay. And you mentioned Battle, Fowler?

11 A Yes.

12 Q Have you paid them for the services they've
13 rendered in connection with this?

14 A Not yet.

15 Q And what were some of those services?

16 A Battle, Fowler draw -- I asked Battle, Fowler
17 to draw up an agreement that they believed -- that in
18 the event that I chose, after I had financed the
19 project to request of Joyce the ability to go to an
20 institution to get it financed, that that was a
21 financible agreement.

22 Q Have they performed any other legal services
23 in connection with this application?

24 A None, other than drawing up an agreement that
25 since I, in essence, was a lender, that I would be able

1 to take my shares and pass it on to another lender.

2 Q You talked to Joyce Morgan every four weeks,
3 is that correct?

4 A She would call me.

5 Q And what do you talk about?

6 A She just tells me what she is basically doing
7 and what is happening with her and her career,
8 basically, the status of the radio station. And that's
9 the extent of it.

10 Q The status of the application?

11 A The status of the application. She calls me
12 and says, "we're going to have a hearing on the 20th,
13 am I available to go?" That type of thing.

14 MS. ROBINSON: I have no further questions,
15 Your Honor.

16 JUDGE LUTON: More cross?

17 MR. BROWN: I won't take that long. I have a
18 few questions.

19 CROSS EXAMINATION

20 BY MR. BROWN:

21 Q At the time that the second amendment to the
22 partnership agreement was drafted, I take it that it
23 was your intent for that to replace the first
24 agreement?

25 A Correct.

1 Q And at that time, Baylan Communications
2 became an unlimited partner?

3 A Correct.

4 Q Why did you substitute Baylan Communications
5 in place of yourself?

6 A Because I have, from a tax point of view, I
7 was now going to be involved in multiple applications,
8 I felt that there was a chance in the future that some
9 would lose money and some would make money and under
10 the change in the '86 tax of the way losses are
11 characterized, that since all the radio stations were
12 in the same grouping, they should be under one
13 corporate entity. I own 100 percent of Baylan
14 Communications.

15 Q At the time that Baylan Communications was
16 substituted and the second limited partnership
17 agreement signed, did you show Ms. Morgan any balance
18 sheets or any other documents related to Baylan
19 Communications?

20 A Baylan Communications was a newly formed
21 entity, so there weren't any.

22 Q There were no documents?

23 A It was not a previous -- it was not an entity
24 that existed prior to the forming of -- it was formed
25 at the same time as the partnership agreement.

1 Q Okay. I take it that then, at the time of
2 its formation, there was no equity in the corporation?

3 A No equity.

4 Q Also, you mentioned that one of the reasons
5 for reforming the limited partnership agreement is that
6 you were thinking of getting bank financing.

7 Did you discuss this at any point in time
8 with Ms. Morgan?

9 A The ability to get bank financing?

10 Q Well, the fact that you would not personally
11 be providing the financing?

12 A No, that was not my intention. My
13 intention -- I had told her that my intention was that
14 I was financing the station. But if I had gone out and
15 done 20 of these stations, at some point you just don't
16 have \$27,000,000 in the bank. So, it was my intention
17 that banks do finance these stations and to have an
18 agreement that was acceptable to an institution to be
19 financed.

20 So I was looking down the road. I could have
21 just had the same agreements that the other applicants
22 have here, which say really nothing and then, at that
23 point, said we'll have a new agreement to go to a bank.
24 But I felt that we had a very good shot at winning this
25 application and wanted to have an application that was

1 financible in a real institution in this country, than
2 just a group of papers that say your partners.

3 Q Okay. If Your Honor would direct the witness
4 to limit his answers specifically to the question
5 that's posed?

6 JUDGE LUTON: Try again.

7 BY MR. BROWN:

8 Q At one point in time, with the original
9 limited partnership agreement, Robin Rothschild became
10 a limited partners, is that correct?

11 A Correct.

12 Q And at that point in time, she was given 40
13 percent of the equity in a limited partnership?

14 A Correct.

15 Q I take it that at the time of the signing of
16 the first limited partnership agreement, everyone
17 within the limited partnership played a specific role?
18 For example, I take it that Joyce Morgan was to be the
19 head of the project, if you will?

20 A Correct.

21 Q You would play the role of the financier?

22 A Correct.

23 Q And what would Ms. Rothschild's role be in
24 that particular --

25 A She played, from my point of view, she had no

1 interests other than the fact that George Newton was
2 not being compensated on a daily or hourly fee type
3 basis and that these hearings and process, I was told,
4 could go from up to umpteen years and there was no way
5 to nail down what the value of his time and efforts
6 were in the process.

7 By her holding stock or an interest in the
8 partnership, that he was guaranteed that he would be
9 paid some dollars at some point in this transaction.

10 Q Do you have before you what's been marked as
11 Peaches Exhibit number 21?

12 A Yes, I do.

13 Q If you could please turn to Page Nine and
14 read the first full paragraph to yourself?

15 Is it your understanding, of this particular
16 paragraph, that a limited partner could transfer their
17 interest in the limited partnership to a relative,
18 without the prior approval of the general partner?

19 A Yes.

20 Q So would that mean that Ms. Rothschild could
21 then effectuate a transfer of interest to her brother,
22 I'm sorry, to her father, under this particular
23 provision?

24 A Yes.

25 Q Thank you. And, I believe you were asked

1 earlier, in reference to Peaches Exhibit number 23,
2 Section 8.3 and if you'll look at sub-paragraph 3 and
3 read that sentence to yourself.

4 A Okay.

5 Q And is it your understanding of this
6 particular paragraph that the general partner can, if
7 in fact, the partnership suffers two consecutive fiscal
8 quarters of operating losses then be removed by the
9 limited partners?

10 MR. HALAGAO: Your Honor, I think that has
11 already been asked by Mr. Robinson and it has already
12 been answered.

13 JUDGE LUTON: Different counsel is examining.
14 He can ask the same question if he needs to.

15 MR. BROWN: Thank you, Your Honor.

16 BY MR. BROWN:

17 Q I'm sorry, I missed your answer.

18 A That's what it says.

19 Q And then if you would go further down the
20 page to the last paragraph that begins with the word
21 "then," if you would read that paragraph to yourself?

22 Is it your understanding of this particular
23 provision that after the termination or removal of the
24 general partner, that the limited partners could then
25 select another general partner who they chose to head

1 up the partnership?

2 A The purpose of the paragraph was that --

3 Q I'm sorry, I'm not really asking about the
4 purpose of the paragraph. I'm asking if it's your
5 understanding of the particular provision that the
6 limited partners, after the removal of the general
7 partner, could then insert a general partner of their
8 choice?

9 A If the limited partners had -- the answer is
10 if the limited partners had gone to outside financing
11 and the paragraph 3 came into effect with two
12 consecutive fiscal quarters of operating losses that
13 occurred, the paragraph says that the general partner's
14 stock becomes the limited partners' stock. She does
15 not lose her percentage ownership interest in the
16 entity and that the general partner -- the limited
17 partners are now putting a new general partner in place
18 to operate and run the station to bring it back to
19 fiscal viability, to protect that \$250,000.

20 Q Is it possible that the terms of this
21 particular section of the partnership agreement could
22 be effectuated even without a financial institution in
23 place that you just referred to?

24 A Is it possible? Anything's possible.

25 Q I assume that's your answer, yes?

1 A My possible answer is yes, but it is not my
2 intention.

3 MR. BROWN: I may only have a few more
4 questions, Your Honor, if you'll bear with me.

5 BY MR. BROWN:

6 Q Do you know who the original limited
7 partnership agreement was prepared by?

8 A No.

9 MR. BROWN: I have no further questions, Your
10 Honor.

11 JUDGE LUTON: Redirect?

12 MR. HALAGAO: No redirect, Your Honor.

13 JUDGE LUTON: You may go.

14 THE WITNESS: Thank you, sir.

15 JUDGE LUTON: You don't have any more
16 witnesses, do you, Mr. Halagao?

17 MR. HALAGAO: No more, Your Honor.

18 JUDGE LUTON: That will complete all the
19 cases that we're going to hear. The record in this
20 proceeding is closed.

21 MR. WINSTON: Excuse me, Your Honor. With
22 respect to closing the record, there had been a
23 stipulation of counsel in respect to supplementing
24 Northeast Florida Exhibit number 4, the map with
25 respect to the residences.

1 Could I request the record be left open for
2 purposes of receiving the map?

3 JUDGE LUTON: I would prefer to close the
4 record and to reopen and reclose. There are
5 administrative reasons why I need to close the record.
6 When that is submitted, it will be received without any
7 difficulty, I'm sure.

8 I would ask, however, that in making the
9 submission, you indicate to me that it's necessary to
10 reopen the record, because I will undoubtedly have
11 forgotten it by then.

12 We're going to need proposed findings of fact
13 and conclusions of law. I am not unaware of the fact
14 that there is an outstanding petition to enlarge issues
15 filed by White against Peaches and I will deal with
16 that in due course. In the meantime, I'm going to ask
17 the parties to see if they can agree among themselves
18 on dates for submission of proposed findings.

19 I'll go off the record now.

20 (Discussion off the record.)

21 JUDGE LUTON: On the record.

22 The parties have agreed to submit proposed
23 findings of fact and conclusions of law by October 25
24 and reply proposed findings by November 8. Those dates
25 are acceptable to the presiding officer and the parties

1 will make their submissions in accordance with those
2 dates.

3 This concludes the hearing. I want to thank
4 counsel and all the participants and I especially want
5 to thank everybody for their courtesy to me. Thank
6 you.

7 (Thereupon, the hearing was closed at 11:55
8 a.m.)

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C E R T I F I C A T E

This is to certify that the attached proceedings
before the FEDERAL COMMUNICATIONS COMMISSION

in the matter of: BALDWIN, FLORIDA

Docket Number: 91-10

Place: Washington, D.C.

Date: August 22, 1991

were held as herein appears, and that this is a true
and accurate record of the proceedings.

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